

E-Filed on 08/23/07

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegle

**DECLARATION OF ERIC
MADDEN IN SUPPORT OF
APPLICATION FOR ORDER TO
SHOW CAUSE WHY DR. LUCIUS
BLANCHARD SHOULD NOT BE
HELD IN CONTEMPT OF COURT**

Eric D. Madden declares under penalty of perjury:

1. I am an adult person competent to testify in court. I make the following statements based upon my personal knowledge except where otherwise indicated. I make this declaration in support of the Application for Order to Show Cause Why Dr. Lucius Blanchard Should Not Be Held in Contempt of Court (the “Application”).

2. I am an attorney licensed to practice in the State of Texas and before all federal district courts in Texas and the United States Supreme Court. I am also admitted to practice *pro hac vice* before this Court in this bankruptcy case and related proceedings.

3. I am a partner at the law firm of Diamond McCarthy LLP (“Diamond McCarthy”), which has been retained as Special Litigation Counsel to the USACM Liquidating Trust (the “Trust”) in connection with this bankruptcy case and related proceedings.

4. On July 19, 2007, the Trust filed a Motion for Order Requiring Dr. Lucius Blanchard to Appear for Examination Pursuant to Federal Rule of Bankruptcy Procedure 2004 (the “2004 Motion”).¹

5. On July 23, 2007, the Court entered an Order Requiring Dr. Lucius Blanchard to Appear for Examination Pursuant to Federal Rule of Bankruptcy Procedure 2004 (the “2004 Order”).²

6. On July 26, 2007, the Trust served the following upon Blanchard: (a) Subpoena for Rule 2004 Examination³ (the “Subpoena”); (b) the 2004 Motion; (c) the 2004 Order; and (d) a \$43.00 witness fee check. On August 9, 2007, the Trust filed the requisite notice of this service with the Court.⁴

7. The Subpoena required Blanchard to appear for examination on August 13, 2007. However, on August 3, 2007, Blanchard’s counsel — Barney Ales of Goold Patterson Ales &

¹ See Docket No. 4187.

² See Docket No. 4197.

³ A true and correct copy of the Subpoena is attached hereto as Exhibit “A-1.”

⁴ See Docket No. 4466.

1 Day — contacted me to request a postponement of Blanchard's examination to mid-September
2 2007. Blanchard's counsel subsequently requested that the examination be further postponed to
3 September 25, 2007. Each time, I agreed to accommodate Blanchard's scheduling requests for the
4 Rule 2004 examination.

5 8. The Subpoena required Blanchard to produce responsive documents on or before
6 August 3, 2007. Blanchard has not yet produced any documents in response to the Subpoena.

7 9. Blanchard has not asserted any oral or written objections to the Subpoena. Nor has
8 Blanchard filed a motion to quash the Subpoena.

9 10. I have sent two letters to Blanchard's counsel — Barney Ales of Goold Patterson
10 Ales & Day — requesting the Blanchard produce the responsive documents and granting two
11 extensions of the deadline to produce such documents. On August 8, 2007, I sent the letter
12 attached hereto as Exhibit "A-2" to Blanchard's counsel. On August 15, 2007, I sent the letter
13 attached hereto as Exhibit "A-3" to Blanchard's counsel.

14 11. In addition to these written communications, I have personally discussed the matter
15 with Blanchard's counsel on at least one occasion in an attempt to resolve this matter without
16 court intervention. I know based on my conversations with Michael J. Yoder, an associate at
17 Diamond McCarthy, that he has had a similar discussion with Blanchard's counsel.

18 12. Despite these efforts, Blanchard has failed to produce any documents in response
19 to the Subpoena. Nor has Blanchard asserted any oral or written objections to the Subpoena.

20 13. In seeking the relief requested in the Application, the Trust has incurred attorney
21 fees and expenses in the amount of at least \$1,500.00. I will present a detailed account of these
22 fees and expenses for the Court's review prior to the hearing on the Application.

23 14. These fees are customarily charged in this area for the same or similar services by
24 an attorneys with the same or similar experience, reputation, and ability, considering the amount
25 in controversy, the time limitations imposed, the results obtained, and the nature and length of
26

1 Diamond McCarthy's relationship with the Trust. I would note that the Trust's request for fees
2 does not include the time expended by the Trust's local counsel in assisting with this Application.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on August 23, 2007, at Dallas, Texas.

5
6 /s/ Eric D. Madden

Eric D. Madden, Esq.
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